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May 5, 2016

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OFFICE OF GENERAL
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COMMISSION

Re: MUR 7006 - Heaney Energy Corp., Little Deep, LLC, and Submarine Rock, LLC

Dear Mr. Jordan:

This response is submitted on behalf of Heaney Energy Corp., Little Deep, LLC, and Submarine Rock, LLC (Respondents) with respect to the Complaint submitted by the Campaign for Accountability (CfA) to the Federal Election Commission (Commission) on February 2, 2016 (Complaint). For the reasons explained below, the Complaint is wholly without merit. Respondents respectfully request that the Commission find no reason to believe that Respondents violated the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30101 *et. seq.* (FECA) and dismiss this matter with respect to the Respondents.

The Complaint is based exclusively on conjecture and not on any first-hand knowledge of a potential violation of the FECA. Further, and more importantly, the Complaint fails to articulate an actual violation of the law on the part of the Respondents, essentially alleging only that Respondents made lawful contributions to New York Jobs Council (Council) before Mr. Andrew Heaney became a federal candidate. Arguments to the contrary, including that Mr. Heaney was a candidate at the time of these contributions, mischaracterize the facts and the law, and should be rejected.

Statement of Facts

Heaney Energy Corp. is a New York Corporation. Little Deep, LLC, and Submarine Rock, LLC are Delaware Limited Liability Corporations. Mr. Andrew Heaney is the Chief Executive Officer of Heaney Energy Corp. and serves in a similar capacity for Little Deep and Submarine Rock. In June of 2015, each of the Respondents made contributions to the Council. The Council is an Independent Expenditure-Only Political Committee (IEOPC) registered with the Commission, which by law may not make contributions, whether direct, in-kind, or via coordinated

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communications, to federal candidates or committees. On August 5, 2015, Mr. Heaney filed his statement of candidacy for election to the U.S. House of Representatives in New York's 19th District. On or about February 3, 2016, the CfA filed the pending Complaint with the Commission.

The Complaint

CfA alleges the Respondents were controlled by, or acting on behalf of, a federal candidate at the time of the June 2015 contributions to the Council; that those contributions were therefore subject to the source and amount restrictions of FECA; and that the contributions were therefore prohibited by 52 U.S.C. §30118.

Response

The Commission should find no reason to believe that Respondents violated FECA because the Complaint is based solely on conjecture and assumptions, is devoid of any supporting facts, and is premised on a fundamental misunderstanding of FECA.

As CfA acknowledges in the Complaint, the Respondents' contributions were entirely permissible under the law unless a candidate for federal office directed them. Despite the convoluted arguments in the Complaint to the contrary, that was simply not the case here. Mr. Heaney was not a candidate in June of 2015, and did not become a candidate until August of 2015.

The Complaint is Devoid of Supporting Facts

In order to support a Reason to Believe determination and proceed with an investigation, the Commission must find that the Complaint is based on sources of information "that reasonably give rise to a belief in the truth of the allegations presented." See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). That is not the case here, as the Complaint rests exclusively on unsubstantiated assumptions.

Andrew Heaney Was Not a Candidate in June 2015

Mr. Heaney was not a candidate at the time of the contributions by the Respondents in June of 2015. The Commission's regulations state that a candidate is:

"...an individual who seeks nomination for election, or election, to federal office. An individual becomes a candidate for Federal office whenever any of the following events occur:

- (1) The individual has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.

(2) The individual has given his or her consent to another person to receive contributions or make expenditures on behalf of that individual and such person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.

(3) After written notification by the Commission that any other person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000 on the individual's behalf, the individual fails to disavow such activity by letter to the Commission within 30 days of receipt of the notification.

(4) The aggregate of contributions received under 11 CFR 100.3(a) (1), (2), and (3), in any combination thereof, exceeds \$5,000, or the aggregate of expenditures made under 11 CFR 100.3(a) (1), (2), and (3), in any combination thereof, exceeds \$5,000." 11.C.F.R. §100.3(a).

There is no evidence any of these criteria had been met in relation to Heaney for Congress or Andrew Heaney as of June of 2015. Heaney for Congress was established on August 5, 2015 and Andrew Heaney's Statement of Candidacy was submitted on August 8, 2015.

CfA's attempt to suggest that Mr. Heaney had already become a candidate at the time Respondents contributed to the Council rests on the flawed assumptions that Mr. Heaney designated the Council to receive these contributions on his behalf. By extension, the Complaint would have us believe that the Council serves as Mr. Heaney's authorized campaign committee. However, as the Commission's General Counsel noted just a few years ago in MUR 6675 (Ready for Hillary PAC, *et. al.*) "a candidate may not designate a political committee that supports or has supported more than one candidate as his or her authorized committee..." unless that committee is a joint fundraising committee (or under other limited circumstances only attributable to candidates for President). *Citing* 52 U.S.C. 8 30102(e)(3)(A); 11 C.F.R. 8 102.13(c).

As indicated in part 5(f) on the Council's Form 1, submitted on June 8, 2015, the Council supports/opposes more than one Federal candidate. In addition, a brief review of the Complaint's Exhibit I, belies CfA's apparent arguments that the Council served as a "front" for Mr. Heaney. That Exhibit, which contains tweets issued by @JobsCouncil, the New York Job's Council's Twitter handle, from September through October, 2015, includes various tweets in support of candidates other than Mr. Heaney, including Chris Gibson, Tom Reed, Lee Zeldin, Elise Stefanik, John Katko, and others. These tweets are at least as demonstrative of the Council's efforts to independently engage in conduct supportive of like-minded candidates for office, as they are of the Council's opposition to former state assemblyman John Faso, Mr. Heaney's opponent in New York's June Republican Primary. The Complaint provides no other substantive evidence of the Council's purported support for Mr. Heaney as compared to other like-minded candidates, and there is no evidence provided suggesting that the Council encouraged or otherwise supported Mr. Heaney's candidacy prior to his announcing his intention to run for office months after these contributions were made. Therefore, given the Council's public support for a variety of candidates, the Council could not have accepted contributions on

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Mr. Heaney's behalf, and Mr. Heaney was not a candidate until he designated his campaign committee to accept such contributions.

Notably, CfA's interpretation of the Commission's regulations would have consequences bordering on the absurd. For instance, under CfA's analysis, any corporate officer who authorized a lawful corporate contribution to an IEOPC, or even an individual who authorized a significant contribution to an IEOPC, would be in violation of FECA if they chose to run for federal office in the future.

CfA Provides No Evidence that the Council was Established by a Candidate.

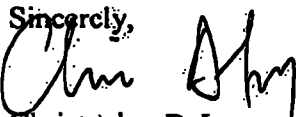
CfA provides no sources of information that reasonably support the notion that Mr. Heaney established or controls the New York Jobs Council. In addition, CfA's attempt to cite to AO 2007-1 (McCaskill) and AO 2009-6 (Risch) for the proposition that "an entity is 'established' by a federal candidate even if the person created the entity before becoming a candidate," Complaint ¶18, is at best, a misleading interpretation of the Commission's findings in those advisory opinions. In fact, in both instances, the Commission was opining regarding state campaign committees previously established by federal candidates, that remained in existence and under their control due to outstanding debt related to prior state campaigns. The Commission's identical statements about these committees -- where "an entity that is directly established, financed, maintained, and controlled by" a federal candidate -- made no distinction regarding whether these were "established" by the candidate, or simply "maintained" or "controlled." Given the context in which these AOs were drafted, it appears far more likely that the latter was the case, and CfA offers no support for its claim to the contrary.

Conclusion

For the forgoing reasons, the Commission should find no reason to believe that Respondents violated FECA, 52 U.S.C. 30101 et. seq. and dismiss this matter with respect to the Respondents without further investigation.

Thank you.

Sincerely,



Christopher DeLacy



Andrew Emerson

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